Comments of
Natural Resources Defense Council, Inc.
on the
Notice of Intent to Prepare an Environmental Impact Statement for the
Long Island Offshore Wind Park
Minerals Management Service
July 10, 2006

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Comments of
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Notice of Intent to Prepare an Environmental Impact Statement (EIS)
On the Proposed Long Island Offshore Wind Park (LIOWP)
Mineral Management Service (MMS)
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The Natural Resources Defense Council, Inc. (NRDC) respectfully submits these comments on the scope of the EIS that MMS will be conducting on the utility-scale wind generation facility being proposed by LIOWP, LLC. NRDC is a national environmental advocacy organization with its headquarters in New York City. NRDC has over 1.2 million members and e-activists nationally. NRDC uses law, science and the support of our members and online activists to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things. Combating global warming and protecting the marine environment are two of NRDC's top environmental priorities. The deployment of appropriately sited and environmentally sustainable renewable energy technologies in the United States is important to achieving both of these goals, especially given the devastating consequences that marine environments are likely to suffer from continuing unchecked global warming.

NRDC supports the environmentally responsible development of Long Island's significant untapped offshore wind resources because of the potential environmental and economic benefits that such development offers in the form of reduced greenhouse gas emissions, lower levels of local and regional air pollution, and a more diversified energy portfolio. At the same time, NRDC requires that any such development be conducted in an environmentally sustainable manner without compromising the unique marine ecosystems that thrive off Long Island's coasts or the plant and animal life and other

natural resources that rely on those ecosystems. We look forward to the opportunity that the EIS process affords to conduct a comprehensive environmental review of the LIOWP to evaluate any environmental risks that it might pose, including potential impacts on coastal and marine life and habitats, the safety of local and migratory bird populations, visual impacts, and noise. However, no form of power generation is without some environmental impacts, and the impacts of offshore wind are orders of magnitude less severe than those associated with oil and gas extraction and related activities already taking place in federally controlled waters off the nation's coasts. Therefore, this EIS should also address the substantial near- and long-term environmental benefits that the LIOWP facility may provide to allow a balanced assessment of the proposed project, particularly in comparison to other forms of electricity generation from which Long Islanders would be likely to derive their power if the project did not go forward.

As required by 40 C.F.R. § 1502.16, the EIS must consider both the direct and indirect environmental effects of the proposed action. In this case, the proposed action is the granting of a lease, easement, or right-of-way by MMS to LIOWP, L.L.C. for the construction and operation of a 40-turbine utility-scale wind generation facility 3.6 miles southwest of Jones Beach. The direct and indirect environmental consequences (both positive and negative) of alternatives to the proposed action, including the alternative of no action, must also be assessed and objectively compared as part of this EIS.[1]

In conducting these assessments, MMS should rely in part on the information provided by LIOWP, L.L.C. and the Long Island Power Authority (LIPA) in its April 26,

[1] *See* 40 C.F.R. § 1502.14.

2005 application to the U.S. Army Corps of Engineers[2] for a permit under § 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, et seq., as well as the data gathered from the significant environmental research that has already taken place at the proposed project site, including the results of the baseline bird assessment study begun in March of 2004. The fact that the application and environmental review process for this proposed facility was well under way before jurisdiction over such offshore energy projects was transferred from the Army Corps to MMS by § 388 of the Energy Policy Act of 2005 (EPAct) provides MMS with a rich body of information on the project's potential environmental impacts not usually available at this early stage of EIS production. MMS should make use of this information wherever appropriate rather than engaging in time-consuming replication of research that has already been done, although of course where there are gaps in the available data or where the environmental assessments conducted to this point are inadequate, MMS must supplement those studies in order to ensure that the review encompassed by this EIS is sufficiently comprehensive.

As part of the scoping process which must take place before the draft EIS is published,[3] MMS should consider, pursuant to 40 C.F.R. § 1508.25, the significant direct, indirect, and cumulative environmental impacts associated with granting access rights for the construction and operation of the LIOWP facility, as well as any connected actions and reasonable alternatives to the proposed action, including the alternative of no action. The following list of scoping considerations is by no means exhaustive but is intended to apprise MMS of what NRDC believes to be the most significant environmental,

[2] A downloadable copy of this application documentation can be found at https://ocsconnect.mms.gov/pcs-public/do/ProjectDetailView?objectId=0b011f80800b87c9 (last visited July 6, 2006).
[3] *See* 40 C.F.R. § 1501.7.

sociocultural, and economic issues which must be "analyzed in depth"[4] as part of the EIS for the proposed LIOWP facility. NRDC recommends that MMS fully investigate all of the following issues in order to produce a draft EIS that is both rigorous and comprehensive and that properly balances an assessment of the project's potential environmental and economic benefits with an assessment of any potential adverse environmental consequences.

- Given the continually increasing demand for energy both on Long Island and in the U.S. as a whole, to which no significant near-term change is anticipated, any negative environmental impacts of the LIOWP facility should be compared in this EIS against the greater negative environmental impacts that would be associated with the "no action" alternative—namely, the licensing and development of additional land-based or offshore power plants using nonrenewable resources like coal, oil and natural gas that would be required if this project was not developed. Some of these negative environmental impacts of nonrenewable forms of power generation include the contribution of coal-fired power plants to local and global air pollution, the effects of oil spills on seabirds and other marine species, and the effects of oil and natural gas pipeline construction on otherwise untouched wilderness areas.

- MMS should assess the extent to which the 140 megawatts of electricity expected to be generated by the LIOWP facility could ultimately reduce the generating capacity of plants producing fossil fuel-based energy sources on which Long Island currently relies for much of its energy, and the positive effects of such potential offsets on air and water quality and public health must be included in this EIS.

- The reduction in greenhouse gas emissions resulting from the greater reliance on non-carbon-based energy sources that the LIOWP facility would make possible would also reduce the catastrophic effects of global warming on the earth and oceans, such as sea level rise, increased severe weather events, and loss of biodiversity due to marine ecosystem changes. The consequences of unchecked global warming are likely to be felt most acutely by those living in coastal communities, including many communities on Long Island. This mitigation of negative environmental consequences associated with global warming is a significant positive environmental impact which must be included in the EIS for the LIOWP facility.

[4] *See* 40 C.F.R. § 1501.7(a) (describing the requirements of the scoping process).

- This EIS should also consider the fact that nonrenewable energy generation methods disproportionately burden the environmental quality and public health of low-income and minority communities, and to the extent that increased use of wind power generated from the LIOWP facility reduces the impacts of those methods or obviates the need for construction of new nonrenewable energy generation facilities, the LIOWP facility will have indirectly contributed to those positive environmental impacts from the standpoint of environmental justice.

- The EIS should examine how the benefits and risks of the LIOWP facility would compare to the benefits and risks of an onshore wind facility of equivalent electricity generation capacity, if such an onshore facility would be feasible from a technological and land use standpoint.

- Impacts on local and migratory bird species must be evaluated on a site-specific basis and any interference with migration and feeding patterns must be avoided wherever possible. At the same time, any potential impacts on local and migratory bird species associated with the LIOWP facility must be compared against the impacts on those species of the increased power generation from nonrenewable sources such as coal and natural gas that could occur if this project is not developed. In assessing the potential impacts of the project on local and migratory birds, MMS should consult the data gathered through the baseline bird assessment that LIPA has been conducting at the proposed project site since March of 2004 and should consider the turbine design features that LIPA has proposed as means of avoiding or minimizing avian impacts.

- Impacts on endangered species must be considered and, consistent with the Endangered Species Act (ESA), negative impacts on such species should be avoided.

- Changes to the marine environment, including effects on the sea floor and water column, as well as effects on water temperature, waves, and local current patterns that may be caused by construction, operation, or decommissioning of facilities related to wind power development or interaction of such facilities with the local marine environment, must be considered on a site-specific basis.

- MMS should also consider the effects that construction of the LIOWP facility may have on the marine environment, including fish populations and benthic invertebrate communities and their habitats. Any economically feasible steps that the project's developers could take in the construction process to make beneficial outcomes more likely should be studied in the EIS and encouraged by MMS, as long as no other potential negative environmental consequences are associated with such steps.

- Effects of the noise of construction and operation of facilities on the marine environment must be carefully analyzed, avoided and continually monitored, particularly as they pertain to marine mammals, whose physiological health and

well-being can be damaged by the noise of construction activities such as pile driving and vessel traffic. Where an unacceptable level of risk to sensitive species such as marine mammals or sea turtles from acoustic effects of construction or operation is detected, MMS should require that appropriate mitigation measures be taken. One such mitigation measure would be to require that construction activities be scheduled so as to avoid periods of peak abundance of particularly sensitive species or species that are rare or endangered.

- Effects of project construction, operations and decommissioning on commercial and recreational fisheries must also be assessed on a site-specific basis and minimized or avoided wherever possible.

- Mitigation measures for any potential negative environmental impacts that cannot be avoided altogether should be thoroughly investigated as part of this EIS so that all interested parties will know what sorts of mitigation measures are technically feasible and maximally effective should MMS ultimately determine that the LIOWP project may go forward.

- Effects on aesthetic and recreational uses of areas within visual or acoustic/auditory range of the eight-square-mile area that the LIOWP facility, as proposed, would occupy, should also be analyzed in terms of their environmental, socio-cultural, and economic significance. Such uses may include tourism, beachgoing, and boating, as well as other recreational activities occurring on or near the proposed LIOWP site. This examination should draw on the experience of European offshore projects where the actual impact of offshore wind development on such uses has already been examined.

- The direct and indirect economic impacts of constructing and operating the LIOWP facility, including both potential positive and negative effects on employment and electricity and natural gas prices, the stabilizing effects associated with diversifying Long Island's energy supply and reducing dependence on oil, and the reduction of economic externalities associated with global warming and air pollution such as avoiding property damage from sea level rise and avoiding hospital visits and sick days resulting from nitrogen oxide emissions, should be considered as part of this EIS.

- The EIS should also consider the impact of the proposed project on New York's ability to meet its regulatory obligations with respect to renewable energy, such as the New York State Renewable Portfolio Standard requiring that 25% of the state's electricity be generated from renewable sources by 2013, and the Regional Greenhouse Gas Initiative (RGGI), which requires significant reductions in the amount of carbon dioxide generated from the power sector by New York and other participating northeastern states.

- As NRDC has already discussed in its comments on the scope of the programmatic EIS for the implementation of MMS' Alternative Energy-Related

Use program for lands on the Outer Continental Shelf (OCS),[5] the organization's preferred instrument for granting access to OCS lands, such as the site of the proposed LIOWP facility, for renewable energy development projects is a long-term lease, lasting twenty years or for the life of the project, whichever is shorter, with an option for extension conditioned upon compliance with all environmental requirements and additional environmental analysis where appropriate. Because onshore wind facilities typically purchase power agreements that are twenty years in duration, the establishment of a comparable lease period for offshore wind projects like the proposed LIOWP facility would ensure that the economic investment involved in developing the site, along with any unavoidable environmental impacts, are not undertaken without allowing enough time to reap the full complement of environmental and economic benefits associated with harnessing this form of energy. The positive and negative environmental impacts of this leasing arrangement must be compared against the impacts associated with other possible access arrangements as part of this EIS.

- MMS should research, as part of this EIS, the sorts of adaptive management strategies that could be used to continually monitor the environmental impacts associated with the LIOWP facility after it becomes operational, assuming that the project does go forward, and to make adjustments in the project or in applicable mitigation measures if such monitoring reveals that actual environmental impacts differ either in type or in magnitude from the impacts that were predicted by preliminary studies. Because of the urgent need to increase the proportion of U.S. power generated from renewable sources both to combat global warming and to reduce air and water pollution, the federal government should bear or at least share in the costs of such monitoring and mitigation activities with the project's developers in order to ensure that the proper amount of ongoing environmental monitoring takes place without making environmentally essential renewable energy projects such as the LIOWP facility prohibitively expensive for developers in an industry which is still in its infancy. The direct and indirect environmental impacts of deploying or failing to deploy such cost sharing mechanisms, including the environmental impacts associated with the effects that different cost sharing arrangements would have on the economic viability and pace of development of the offshore wind industry, should be carefully assessed through this EIS.

- The environmental impacts of decommissioning the proposed LIOWP facility after it has reached the end of its operational life or become nonoperational for any other reason should be assessed through this EIS, and MMS should take steps

[5] § 388(a) of the 2005 EPAct provides that the amendment to the Outer Continental Shelf Lands Act, 43 U.S.C. 1337, granting jurisdiction to MMS over renewable energy activities on the OCS, did not require the resubmittal of any documents with respect to a project for which an offshore test facility had already been constructed or for which a request for a proposal by a public authority had already been issued prior to enactment of the amendment. Because the proposed LIOWP facility falls within this "savings provision," the environmental review and permitting process for this facility may proceed independently of the development of the larger offshore renewable energy program for which MMS is currently conducting a programmatic EIS and engaging in rulemaking activities.

to ensure that if constructed, the site of the proposed LIOWP facility is returned as nearly as possible to its previous environmental condition once power generation activities have ceased there.

NRDC looks forward to continuing to work with MMS to ensure that the substantial wind energy resources available off of Long Island's coasts are harnessed in an environmentally sustainable manner. NRDC believes that this EIS, supplementing where appropriate the data that has already been gathered about the proposed LIOWP's potential environmental impacts as part of the 2005 application process for a § 10 permit from the Army Corps, should provide the rigorous site-specific environmental review process that is necessary before proceeding with the development of this environmentally and economically beneficial form of energy on Long Island.

Respectfully Submitted,

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